IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10312 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ADODIYA NATHIBEN CHATURBHAI

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR SAMIR DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/02/2001

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. Challenge has been made by petitioner Adodiya Nathiben Chaturbhai, detenu, at present detained in Sabarmati Central Jail, Ahmedabad, by this petition under

Article 226 of the constitution to the order dated 4.9.2000 of the District Magistrate, Bhavnagar District, Bhavnagar, under which he was ordered to be detained as a `bootlegger'.

#. Manifold contentions have been raised by learned counsel for the petitioner challenging the propriety, correctness and legality of this order but in the facts of this case and more particularly, in view of the statement made by learned counsel for the respondents during the course of arguments, it is not necessary to give out the detailed facts of this case, to refer to all those contentions, consider and record findings thereon.

#. In paragraph No.20 of the special civil application, the petitioner made a statement that the copies of the witnesses recorded u/s.161 of the CR.P.C. were not supplied to the petitioner. Paragraph-20 of the special civil application reads as under:

> 20. The petitioner further submits that while passing the orer of detention, the detaining authority has not considered the most important relevant material and vital documents, i.e. statements of the witnesses recorded under Section 161 of the Criminal Procedure Code in respect of the Criminal offences and as stated in the chargesheet counter as under the statements of witnesses P.C. Mr. Narendrasinh Ranchodji, P.S.O. Mr.K.R.Barot in respect of C.R. No.40/2000, P.C. Mr.Narendrasingh Ranchodji, P.S.O. A.J.Jadeja in respect of C.R. No.97/2000, P.C. mr.Narendrasingh Ranchodji, P.S.O. A.J.Jadeja in respect of C.R. No.373/2000, S.C. Mr.Desurbhai Bhiabhai and P.S.O. Mr.K.L.Jani in respect of C.R. No.385/2000, S.C. Mr.J.M.Sarvaiya, P.C. Mohmad Rafiq Mohmadkhan, Mr.Narendrasinh Ranchodji and Mr.D.H.Parmar in respect of 430/2000, P.C. Mr.Narendrasinh Ranchodji, P.S.O. Mr.M.J.Jadeja in respect of 556/2000, P.C. Mr.Mahendrasinh Vakhatsinh, P.S.O. K.B.Jani in respect of C.R. No.566/2000 etc. The petitioner further submits that the detaining authority has failed to consider the said statements. Therefore, the subjective satisfaction arrived at by the detaining authority to pass the order of detention is not genuine and it is vitiated.

#. A copy of the representation which has been made by petitioner against the detention order is there on the

record and I find therefrom that this complaint has been made by petitioner therein. It is not the case of respondents that the copies of the documents have been supplied to the petitioner. The learned counsel for the respondents also fairly conceded that the copies of these documents were not supplied. It is a case where the petitioner has been deprived of his valuable right to make representation against the detention order which is guaranteed to him under Article 22(5) of the Constitution of India.

#. Only on this ground, this petition succeeds and the same is allowed and the order of detention of the petitioner dated 04.9.2000 is quashed and set aside. The petitioner - Adodiya Nathiben Chaturbhai, the detenu, present at Sabarmati Central Jail, Ahmedabad, be set at liberty forthwith, if she is not required in any other case. Rule is made absolute. No order as to costs.

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(sunil)